

THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

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PUBLIC HEARING ON PROPOSED MODIFICATIONS
TO THIRD MANAGEMENT PLAN FOR THE TUCSON AMA

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HEARING DATE:

3rd day of March, 2008

Tucson, Arizona

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REPORTED BY: G. ALLEN SONNTAG,
Certified Reporter No. 50194

A P P E A R A N C E S

KENNETH SEASHOLES,

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BE IT REMEMBERED that pursuant to notice a
public hearing was held in Room No. 158, Tucson State
Complex, 400 West Congress Street, in the City of
Tucson, County of Pima, State of Arizona, before G.
Allen Sonntag, Certified Reporter No. 50194 in and for
the State of Arizona, Certified Realtime Reporter, on
the 3rd day of March, 2008, commencing at the hour of
02:00 p.m.

1 MR. SEASHOLES: This is the time and the
2 place for the Public Hearing on proposed modifications
3 to the municipal conservation program of the
4 management plan for the Tucson Active Management Area
5 for the third management period, 2000-2010.

6 My name is Kenneth Seasholes. I'm the Area
7 Director for the Tucson Active Management Area and I
8 will be the Hearing Officer at this hearing.

9 With me, is Joe Singleton, Assistant Area
10 Director for the Pinal Active Management Area. Joe
11 has been involved in the development of the proposed
12 modifications and he will give a brief description of
13 the modifications after my introductory remarks.

14 We have a Court Reporter here today to take
15 down what is being said. It is important for speakers
16 to please speak up so that the Court Reporter can
17 accurately record your comments. If anyone has
18 difficulty hearing me or a speaker, please let me
19 know.

20 If you haven't already done so, please sign
21 in on the sign-in sheet on the table near the
22 entrance. There are also speaker cards on the table.
23 If you would like to speak today, please fill out a
24 speaker card.

25 Before turning things over to Joe to describe

1 the proposed modifications, I would like to point out
2 that the modifications relate only to the conservation
3 requirements for most but not all large municipal
4 providers.

5 The modifications do not affect smaller
6 municipal providers, which are providers that serve
7 less than 250 acre feet of water per year from
8 municipal uses nor do they affect large municipal
9 providers that are regulated as institutional
10 providers.

11 I would like to next point out that the
12 purpose of this hearing is to receive oral or written
13 comments on the proposed modifications. Only comments
14 and evidence for or against the proposed modifications
15 will be accepted at this hearing. No comments or
16 evidence will be received regarding any other issues
17 relating to the Third Management Plan. If anyone has
18 questions or comments on issues or programs that are
19 outside of the scope of this hearing, they may contact
20 me after the hearing.

21 The hearing will be conducted in an informal
22 manner. As I mentioned at the beginning, a Court
23 Reporter is recording everything being said. A copy
24 of the transcript for the hearing will be available
25 for review at the Department's offices and will also

1 be posted on the Department's Website when it is
2 available.

3 At the conclusion of the hearing, I will be
4 accepting any written comments or documentary evidence
5 that anyone may wish to file with the Department
6 regarding the proposed modifications.

7 The Department will also accept written
8 comments on the proposed modifications until 5:00 p.m.
9 on Wednesday, March 5th. Written comments submitted
10 after the hearing should be submitted to the
11 Department's Docket Supervisor, Kathy Donoghue.
12 Ms. Donoghue's fax number is 602-771-8683. Her E-Mail
13 address is kardonoghue@azwater.gov. I will repeat the
14 fax number and E-Mail address after the completion of
15 oral comments.

16 I would now like to go over the process that
17 will be followed after the closing of the hearing
18 record, which is Wednesday at 5:00 p.m.

19 Within 30 days after the close of the hearing
20 record, the Director will make and file in the
21 Department a written summary of findings with respect
22 to the comments and evidence received prior to the
23 close of the record, including any written comments or
24 evidence received before 5:00 p.m. on Wednesday.

25 If in the findings the Director decides to

1 adopt the modifications, the Director will make and
2 file in the Department an order adopting the
3 modifications with any changes made in response to
4 comment's and evidence received before the close of
5 the hearing record.

6 Notice of the order will be sent to all
7 persons who signed the attendance sheet today and to
8 all persons who submitted comments or evidence prior
9 to the close of the record.

10 The Director will also publish a summary of
11 the modifications, findings and order of adoption once
12 a week for two consecutive weeks in a newspaper of
13 general circulation within the Tucson Active
14 Management Area. Any person may file a request for
15 rehearing or review of the order of adoption within 30
16 days after the second publication of the notice.

17 The last day for filing requests for
18 rehearing or review will be identified in both the
19 mailed and published notices of the order of adoption.
20 If no one files a timely request for rehearing or
21 review, the modifications adopted by the order of
22 adoption will become final.

23 If a timely request for rehearing or review
24 is filed, the Director will have 60 days after
25 receiving the request to issue a decision on the

1 request. The Director may grant a rehearing, grant
2 review without rehearing or deny the request.

3 Following the Director's decision on a
4 request for rehearing or review, the Director will
5 issue a final order of adoption adopting the
6 modifications with any changes made in response to the
7 request for rehearing or review.

8 Notice of the final order of adoption will be
9 published in a newspaper of general circulation within
10 the AMA once a week for two consecutive weeks. The
11 modifications will become final upon the second
12 publication.

13 Regardless of whether anyone files a request
14 for rehearing or review, any person may seek judicial
15 review of the Director's decision to adopt the
16 modifications as provided in Arizona Revised Statutes,
17 Section 45-114, Subsection C.

18 Within 30 days after the modifications become
19 final, the Department will mail notice of
20 modifications to all municipal providers that will be
21 affected by the modifications.

22 A provider that receives the notice may
23 request an administrative review of a new requirement
24 within 90 days after receiving the notice as provided
25 by Arizona Revised Statutes, Section 45-575,

1 Subsection A.

2 If the provider demonstrates that it would be
3 unreasonable to require the provider to comply with a
4 new requirement because of the provider's unique
5 circumstances, the Director may modify the
6 requirement.

7 A provider may also request additional time
8 to come into compliance with a new requirement by
9 filing a variance from the requirement within 90 days
10 after receiving the notice as provided by Arizona
11 Revised Statutes, Section 45-574.

12 The Director may allow the provider up to
13 five additional years to come into compliance with the
14 requirement if the provider demonstrates that
15 compelling economic circumstances prevent it from
16 complying by the date set forth in the requirement.
17 At the present time the Department expects the
18 modifications to be final by the middle of this year.

19 We will now turn the hearing over to Joe
20 Singleton, who will describe the proposed
21 modifications in greater detail.

22 MR. SINGLETON: Thanks, Ken.

23 The Third Management Plan was adopted by the
24 Director of Water Resources in December of 1999. It
25 contains conservation requirements for agricultural,

1 municipal and industrial groundwater uses in the
2 Tucson AMA. The requirements became effective in 2002
3 and will remain in effect until the Fourth Management
4 Plan is adopted and becomes effective sometime after
5 2010.

6 The Third Management Plan currently requires
7 most large municipal providers, who are providers
8 serving more than 250 acre feet of water per year for
9 municipal uses, to be regulated under the total
10 gallons per capita per day or total GPCD program. The
11 total GPCD program limits the total amount of water a
12 large provider may deliver during a year to a volume
13 base on a service area population and total GPCD
14 requirement.

15 The management plan also provides that a
16 large municipal provider, regulated under the total
17 GPCD program may apply to be regulated under one of
18 two alternative programs.

19 One of those programs is the Nonper Capita
20 Conservation Program, which requires a large provider
21 to implement specific conservation measures within its
22 service area and to comply with a stringent
23 groundwater cap, but the provider is not required to
24 comply with a GPCD requirement.

25 Last year the Legislature enacted into law

1 Senate Bill 1557, which requires the Director of Water
2 Resources to modify the Nonper Capita Conservation
3 Program so that it requires a large municipal provider
4 regulated under the program to implement a public
5 education program, a metering program and one or more
6 additional water conservation measures to be selected
7 from a list of measures adopted in the management
8 plan.

9 The Director is required to design the
10 modified Nonper Capita Conservation Program to achieve
11 water use efficiency in the service areas of municipal
12 providers regulated under the program equivalent to
13 the water use efficiency assumed by the Director in
14 establishing the total GPCD requirements for those
15 providers.

16 The legislation requires all large municipal
17 providers that are not designated as having an assured
18 water supply and that do not qualify as large
19 untreated water providers to submit a provider profile
20 to the Director by July 1, 2009, and to be regulated
21 under the modified Nonper Capita Conservation Program
22 beginning January 1, 2010, or the date the Director
23 approves the provider's profile, whichever is later.

24 Large municipal providers designated as
25 having an assured water supply are not required to be

1 regulated under the modified Nonper Capita
2 Conservation Program. Those providers will continue
3 to be regulated under the conservation program they
4 were regulated under as of January 1, 2008, but they
5 may elect to be regulated under the modified Nonper
6 Capita Conservation Program if they wish to be
7 regulated under that program.

8 The proposed modifications promulgated by the
9 Director for the purpose of implementing Senate Bill
10 1557. These modifications seek to change the
11 municipal conservation program chapter to include the
12 modified Nonper Capita Conservation Program for large
13 municipal providers. The modified Nonper Capita
14 Conservation Program was developed in concert with
15 stakeholders after an extensive public process.

16 The chapter will also be amended to require
17 all large municipal water providers without a
18 designation of assured water supply, except those
19 regulated as large untreated providers, to be
20 regulated under the modified Nonper Capita
21 Conservation Program.

22 Providers regulated under the Institutional
23 Provider Program will also be allowed to continue to
24 be regulated under the existing provisions of that
25 program. Designated providers will be able to choose

1 between the current regulatory structure and the new
2 program.

3 The modified Nonper Capita Conservation
4 program is a performance-based program. Program
5 requirements call for the submittal of a provider
6 profile, an annual conservation efforts report, the
7 provider's current water rate structure and
8 implementing a public water conservation education
9 program.

10 The program also requires providers to
11 implement an additional number of measures based on
12 the number of service connections in the system from a
13 list of measures that is included within the program.

14 Systems with up to 5,000 connections must
15 implement at least one additional measure, those with
16 5,001 to 30,000 connections must implement five
17 additional measures, while those systems with more
18 than 30,000 connections must implement at least ten
19 measures in addition to the public education program.

20 For existing large municipal water providers
21 that are already implementing one or more conservation
22 practices that are on the list of water conservation
23 measures, those measures will count towards the total
24 minimum program requirements. The provider profile
25 must describe the water use patterns and

1 characteristics of the provider's service area.

2 Additionally, the profile must contain a
3 description of what conservation measures are being
4 implemented, what additional measures, if any, will be
5 implemented to comply with the program requirements
6 and an explanation as to how those water conservation
7 measures are relevant to the provider's existing
8 service area characteristics or water use patterns.
9 ADWR will review and approve the provider profiles.

10 The annual conservation efforts report will
11 contain a description of conservation measures
12 implemented during the year and an assessment of the
13 outcome of implementing those measures. The report
14 must also detail any measures that were substituted
15 for previous measures during the year and an
16 explanation on how the new measure is relevant to the
17 service area characteristics or water use patterns of
18 the service area. The report must also include a plan
19 for implementing the conservation measures that the
20 provider is using for the current year.

21 MR. SEASHOLES: Thank you, Joe.

22 No one has filled out a card indicating they
23 would like to present comments on the proposed
24 modification.

25 Is there anyone here who wishes to speak on

1 the proposed modifications?

2 (No response.)

3 MR. SEASHOLES: Let the record reflect that
4 no one wishes to speak.

5 Is there anyone here who wishes to submit any
6 written comments or evidence they have brought with
7 them?

8 (No response.)

9 MR. SEASHOLES: Let the record reflect that
10 no one wishes to submit anything in writing.

11 As I mentioned earlier, written comments on
12 the proposed rules may be submitted until 5:00 p.m. on
13 Wednesday, March 5, 2008. If you would like to submit
14 written comments after the hearing, please fax or
15 E-Mail them to Kathy Donoghue, the Department's Docket
16 Supervisor. Ms. Donoghue's FAX number is 602-771-8683
17 and her E-Mail address is kardonoghue@azwater.gov.

18 This Public Hearing is now adjourned. Thank
19 you all for attending.

20 (Record closed at 02:18 p.m.)

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1 STATE OF ARIZONA)
2 COUNTY OF PIMA) SS.
3)

4 C E R T I F I C A T I O N

5 BE IT KNOWN that I, G. ALLEN SONNTAG,
6 Certified Court Reporter 50194, took the foregoing
7 proceedings at the time and place stated in the
8 caption hereto; that I was then and there a Certified
9 Court Reporter in and for the State of Arizona; by
10 virtue thereof, I was authorized to administer an
11 oath; that no witnesses appeared for testifying; and
12 these 15 pages contain a full, true and accurate
transcription of my notes of said proceedings.

13 I FURTHER CERTIFY that I am not of counsel
14 nor attorney for either or any of the parties to said
15 cause or otherwise interested in the event thereof;
16 and that I am not related to either or any of the
17 parties to said action.

18 IN WITNESS WHEREOF, I have hereunto
19 subscribed my name and affixed my signature this
20 7th day of March, 2008.

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22 _____
Certified Reporter No. 50194
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